

SUPREME COURT OF QUEENSLAND

CITATION: *R v CEF* [2026] QCA 171

PARTIES: **R**
v
CEF
(appellant)

FILE NO/S: CA No 225 of 2025
DC No 621 of 2024

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: District Court at Southport – Date of Conviction: 21 August 2025 (Jackson KC DCJ)

DELIVERED ON: 11 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 19 August 2026

JUDGES: Mullins P, Doyle JA, Smith J

ORDER: **Appeal dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – INCONSISTENCY OF VERDICTS – where the appellant was acquitted of counts 1, 2 and 5 but convicted on count 4 – whether the verdict of guilty on count 4 is inconsistent with the verdicts of acquittal on counts 1, 2 and 5 – where there was a difference in the evidence between the counts – whether regard should be had to count 3 on which the jury was unable to agree – whether the verdict was an affront to logic and common sense

MacKenzie v The Queen (1996) 190 CLR 348; [1996] HCA 35, applied
Osland v The Queen (1998) 197 CLR 316; [1998] HCA 75, applied
R v ACC [2026] QCA 131, cited
R v CCX [2022] QCA 260, cited
R v DAL [2005] QCA 281, applied
R v DCY [2026] QCA 144, cited
R v SFB [2026] QCA 83, cited
R v Smillie (2002) 134 A Crim R 100; [2002] QCA 341, distinguished

COUNSEL: K T Bryson for the appellant
C M Cook for the respondent

SOLICITORS: Legal Aid Queensland for the appellant
Director of Public Prosecutions (Queensland) for the respondent

- [1] **MULLINS P:** I agree with Smith J.
- [2] **DOYLE JA:** I have read and agree with the reasons for judgment of Smith J and with the order proposed by his Honour.
- [3] **SMITH J:**

INTRODUCTION

- [4] The appellant was charged with the following counts:
- (a) Count 1 – that on or about 21 April 2024 at Southport he raped the complainant;
 - (b) Count 2 – that on or about 21 April 2024 at Southport he raped the complainant;
 - (c) Count 3 – that on or about 21 April 2024 at Southport he raped the complainant;
 - (d) Count 4 – that on or about 21 April 2024 at Southport he raped the complainant; and
 - (e) Count 5 – that on 22 April 2024 at Southport he raped the complainant.
- [5] After a four-day trial, the appellant was acquitted of counts 1, 2 and 5, but convicted by a majority verdict of count 4. No verdict was reached on count 3. The appellant was sentenced on count 4 to two years’ imprisonment, fully suspended, for an operational period of two years.
- [6] The sole ground of appeal is that the verdict of guilty on count 4 is inconsistent with the verdicts of acquittal on counts 1, 2 and 5.
- [7] For the reasons given below, the appeal fails.

EVIDENCE

Complainant

- [8] The complainant met the appellant through a friend, Ms MG. The nature of the complainant’s relationship with MG was as friends, although they also had a casual sexual relationship.
- [9] On 21 April 2024, the complainant was with MG, who received a phone call from the appellant, inviting them to his house for a meal. The complainant then drove with MG to the appellant’s house late in the afternoon. Later, two people, Robert and Josh, joined them. They got groceries for the appellant, and he cooked the meal. The complainant went with MG and purchased a bottle of whisky in the evening.
- [10] The appellant and his friends were drinking. The complainant did not plan on drinking, because she and MG had plans to go out afterwards. However, it was suggested that they could take an Uber, and as a result, the complainant started having shots of whisky and had around seven of them. When the bottle was finished, MG had completely passed out at the dining room table. After this, MG was taken by the

appellant to his bedroom. The complainant followed them. The appellant put MG on his bed, and the complainant got onto the bed next to MG.

- [11] The appellant then came onto the bed as well and started touching the complainant under her bra. The complainant did not react to this and did not say anything. The appellant was touching her nipples and then took her left hand and placed it on top of his genitals on top of his pants. The appellant then put his penis into her mouth while she was lying on the bed (this constituted count 1). The complainant did not react to this because she was scared. The appellant then got off the bed and told the complainant to sit up and continued to put his penis into her mouth. He was thrusting in and out for a short time (this constituted count 2).
- [12] The appellant then pulled the complainant down to the carpet, saying, "I want to be inside you now." The complainant covered her genitals, and the appellant said, "We're already here now," and she shook her head to say "no."
- [13] At one point, the appellant had a phone with him, and it seemed like he was filming what was happening. The complainant was in this position for about 10 minutes, with the appellant on top of her, she was frozen and scared, and he penetrated her vagina with his penis (this constituted count 3). At this stage, MG was still sleeping at the edge of the bed.
- [14] The appellant then left the room for a short time and came back and ejaculated into the complainant's mouth and then left the room (this constituted count 4). After the appellant left the room, the complainant went to the bathroom, washed out her mouth and went back to bed and to sleep.
- [15] At about 1.00 am, the complainant went to get a glass of water upstairs and she saw the appellant awake on the couch. The appellant said, "Let's do it again." The complainant responded, "No." The appellant followed the complainant downstairs. The complainant got onto the bed and the appellant got on as well, and he put his fingers inside her vagina, but the complainant pushed him away (this constituted count 5). The appellant said he wanted to ejaculate into her mouth, but the complainant said no. At that stage, the appellant left the room. The complainant unsuccessfully tried to wake MG.
- [16] The complainant stayed at the house until the next morning at around 5.30 am, when MG woke up and the complainant drove them back home. Later, the complainant sent text messages to MG, which were tendered as evidence of preliminary complaint.
- [17] After the complainant left the appellant's house, she went to work and spoke with some workmates. She was not feeling fit to work. She called a friend and told her what had happened.
- [18] The complainant did not give permission to the appellant to do anything sexual with her.

Ms MG

- [19] MG said that she had met the complainant in around October 2023, and they had a casual sexual relationship, which was on and off until 2024.
- [20] On the day in question, MG had been invited to the appellant's house by him and they arrived at about 3.30 pm. The appellant, at that stage, was alone in the house but Robert and Josh later arrived. They were having fun and drinking. The appellant cooked them food.

- [21] They had a bottle of whisky and then Robert left and a second bottle was purchased. The last thing MG recalls was 9.30 pm. She stayed at the house and woke up at 5 am the next day in the appellant's room. She did not recall getting to the room. She left with the complainant at around 5.50 am. She accepted that she had received the text messages from the complainant during the course of the day in which complaint was made to her.

Other preliminary complaint witnesses

- [22] A co-worker of the complainant said that on 22 April 2024, she spoke to the complainant at about 7.30 am, who told her, "I think I was sexually assaulted" and "I think I was raped." The complainant told her that she thought it may have been filmed.
- [23] Another co-worker of the complainant, said that on 22 April 2024, the complainant was at work in the morning and seemed quieter and sadder. The complainant told her she had gone to a party, she was drunk, she had stayed alone with the guy and she was raped. She provided no details about the rape.
- [24] A close friend of the complainant gave evidence that she had known the complainant since about 2022. On the morning of 22 April 2024, at about 9–9.30 am, she received a phone call from the complainant and it was placed on speaker phone. The complainant was shaky and she said, "I think I've been raped." She and her partner went to her place to comfort her. After they arrived there, the complainant went into more detail, saying she had been at a party with MG and had been drinking, and towards the end of the night she had been raped. They tried to get her to go to the hospital to get a sexual assault kit done, and they went to the hospital. The complainant claimed that she had been coerced into drinking. She said that at the end of the night MG was asleep in the bed next to them and the appellant was forcing himself onto her, kissing her. At one point she said no. She was then picked up from the bed to go to the floor and he kissed and touched her and put his penis in her mouth and inside her as well.
- [25] The partner of the close friend, in his evidence, confirmed that he heard the complainant on speaker phone on 22 April 2024. They then went to her place. The complaint was that one of the men who was MG's friend assaulted her, but she did not go into much detail. They then went to the hospital. She also complained that throughout the afternoon the appellant kept trying to touch her and touch her hair, and she was trying to keep her distance. She said she had six shots of whisky, and at about 11 pm she and MG went to the appellant's room to sleep. MG passed out and the complainant was next to her. The appellant entered the room and began touching her and kissing her. She tried to say no but he kept going. He then picked her up, laid her on the floor, put his penis in her mouth and her vagina and ejaculated in her mouth. She then went back to bed and tried to fall asleep. At 1 am, she woke up and went to the kitchen to get a glass of water. The appellant was pressuring her for sex and she said no, but he followed her to the bedroom and she got onto the bed and covered herself up with blankets. She left at 7 am the next morning.

Appellant

- [26] The appellant gave evidence that included the following. He knew the complainant. MG had stayed at his place a couple of times, sleeping in his bed, but there was never any sexual contact between them.

- [27] On 21 April 2024, he called MG at 11.00 am and invited her to have a drink and dinner at his place. The complainant was also invited. They arrived at about 3–4 pm, bringing food which he cooked.
- [28] They started drinking, stopped and had dinner and then continued to drink again. They finished one bottle of whisky, and MG and the complainant went out to buy another one. Robert had left the house at this stage.
- [29] Josh then later left after they finished drinking. The three of them were left there and they asked the complainant if she wanted some shots, and she had some. The appellant suggested to MG that she stay at his place. The appellant's housemate arrived home and had some drinks with them as well and then went to his bedroom. After this, MG passed out and fell asleep. The appellant carried MG downstairs and the complainant followed him. They went back upstairs and continued drinking.
- [30] He went downstairs to get his pillow and blanket to sleep in a spare room, but the complainant moved first. She touched him, pulled him onto the bed and started kissing him. She said, "I want to taste your come." She then sucked on his penis and they were then on the floor. They moved to the toilet together and kissed and she sucked his penis. The complainant was laughing. The appellant told her not to be too loud otherwise MG would be awake. At this stage, he told the complainant that they should go upstairs. He went upstairs and waited for her. They then went to the spare room and started kissing again, and she sucked his penis. She told him not to tell MG about this as she loved her. They had sex with her on top of him. They did a lot of other sexual positions including her sucking his "dick" again. Ultimately, he told her he was tired and could not ejaculate. Because the room was hot, he told her to go downstairs. She did. He later went downstairs to get his pillow and blankets and, again, she said she wanted to taste his "come" and they were on the floor and she sucked his penis. He then went upstairs and a second housemate had arrived home, and he slept beside the second housemate's bed that night. He was awoken at about 4 am by a video call from his girlfriend. He was lying on the couch using his phone, browsing Facebook and the complainant had come upstairs. She said she was thirsty and told him that MG was not awake. The appellant then checked on MG.
- [31] At one stage, when they were in the toilet, he asked her if she wanted to record the activity. Eventually, the appellant woke up MG at about 5 am or 5.30 am because she had to go to work. Shortly after this, he kissed the complainant. At this stage, MG and the complainant left. At no stage did he force himself on the complainant during the night and she was the one making the moves on him. He admitted he had deleted the video he had taken.
- [32] The appellant therefore accepted that the conduct the subject of counts 1 to 4 occurred but that the complainant consented voluntarily to those acts. The appellant denied that the conduct the subject of count 5 occurred.

ISSUES AT TRIAL

- [33] The reliability and credibility of the complainant's evidence was in issue on all counts. As the appellant accepted that the acts that constituted counts 1 to 4 occurred, the focus on those counts at the trial was whether those acts occurred with the consent of the complainant or, if the jury was satisfied beyond reasonable doubt that the complainant did not consent, whether the appellant had an honest and reasonable, but

mistaken, belief that the complainant had consented. The appellant denied that the act that constituted count 5 occurred, so the issues for the jury on count 5 were whether that act occurred and, if so, whether the prosecution could prove the complainant's lack of consent to that act or exclude the appellant's mistake of fact as to consent.

- [34] The trial judge directed the jury as to the elements of each count and reminded the jury that mistake of fact needed to be excluded. The trial judge made it clear that, from the appellant's point of view, all sexual acts had occurred consensually but that he denied the act of digital penetration the subject of count 5.
- [35] His Honour gave the usual direction that there were five different charges, and each needed to be considered separately, evaluating the evidence relating to the particular count and that separate verdicts would be taken.
- [36] In giving the directions as to the meaning of consent, the trial judge reminded the jury of the complainant's evidence that at the time of the first two counts the complainant froze, that for count 3, she covered her genitals and shook her head and she said she also shook her head for count 4. His Honour told the jury that it was a matter for them, but they might take the view that the complainant initially resisted and objected to the conduct the subject of count 3, but even if she submitted, that was totally different to consent.
- [37] The trial judge gave detailed directions on the issue of mistake of fact. His Honour noted that the complainant had said she did not consent and made this clear to the appellant with respect to counts 3 to 5. This was relevant to whether the appellant was mistaken as to consent.

SUBMISSIONS ON THE APPEAL

- [38] The appellant submits that the evidence of the complainant on counts 1, 2 and 3 was "almost inseparable" from count 4. It is submitted this was a continuous course of conduct. This case is like the case of *R v Smillie*¹ because the same witness described an integrated episode and nothing distinguishes the reliability of proof between the particular counts. The quality of the evidence on each count bears no distinction and there was no rational basis for the verdict of guilty on count 4.
- [39] The respondent submits that with respect to counts 1 and 2, the complainant gave evidence that she did not react when the acts were occurring. On the other hand, for count 3 she covered her genitals with her hands and shook her head to indicate "no" to the appellant, but the appellant pushed her hands away and penetrated her vagina with his penis. The events in counts 3 and 4 were therefore different to counts 1 and 2. The Crown did not negate mistake of fact for counts 1 and 2. After the act the subject of count 3, the appellant left the bedroom and returned and put his penis in the mouth of the complainant and ejaculated. Count 5 was separated in point of time and it was denied by the appellant. It is not relevant for consideration to the ground of appeal.

DISCUSSION

- [40] In determining whether a verdict is inconsistent, the appellant must show that the verdicts demonstrate that no reasonable jury who applied their minds to the evidence

¹ [2002] QCA 341; (2002) 134 A Crim R 100.

could have arrived at the two different verdicts. To determine this, one must have regard to the evidence, the issues and the directions which the jury was given to determine whether the verdict is unsafe.²

[41] In *MacKenzie v The Queen*³ Gaudron, Gummow and Kirby JJ said:

- (a) The test is of one logic and reasonableness.
- (b) The courts are reluctant to accept a submission that verdicts are inconsistent.
- (c) If there is a proper way to reconcile the verdicts then appellate courts should conclude that juries performed their functions as required.
- (d) If there is some evidence to support the verdict said to be inconsistent, it is not the role of the appellate court to substitute its opinion of the facts for one which was open to the jury.
- (e) The view may be taken that the jury simply followed the judge's instruction to consider separately the charge presented and apply to each count the requirement that all of the ingredients must be proved beyond reasonable doubt.⁴ Alternatively, the appellate court may conclude the jury took a merciful view of the facts on one count.
- (f) There is a residue of cases, however, where the verdicts returned are an unacceptable affront to logic and common sense. For example, where the verdict suggests compromise or confusion or misunderstanding in the minds of the jurors.
- (g) "It is only where the inconsistency rises to the point that the appellate court considers that intervention is necessarily required to prevent a possible injustice that the relevant conviction will be set aside."
- (h) It is impossible to state hard and fast rules. It depends on the facts of the case.
- (i) It is for the appellant to establish that the verdicts of acquittal and conviction are an unacceptable affront to common sense and logic.⁵

[42] The starting point is that a jury may accept a complainant's evidence in one respect while retaining a reasonable doubt about the commission of other acts. An acquittal simply means the jury was not satisfied beyond reasonable doubt that the event alleged occurred.⁶

[43] As was said in *R v SFB*,⁷ the differing verdicts in that case indicated the jury did follow the trial judge's direction that each count needed to be considered separately by reference to the evidence that applied to the different acts that constituted the counts, "despite their occurrence in the same episode."

[44] In this case, the jury was told by the trial judge to consider each count separately and that they had to evaluate the evidence relating to the particular charge under consideration. The jury was told they would return separate verdicts on each charge

² *Osland v The Queen* [1998] HCA 75; (1998) 197 CLR 316 at [120]-[121].

³ [1996] HCA 35; (1996) 190 CLR 348 at pages 366-368.

⁴ Also see *R v AAC* [2026] QCA 131 at [57].

⁵ Also see *R v CCX* [2022] QCA 260 at [56].

⁶ *R v CCX* [2022] QCA 260 at [61].

⁷ [2026] QCA 83 at [46]. Also see *R v DCY* [2026] QCA 144 at [61].

and that the evidence on each charge was different, so their verdicts did not need to be the same. That was an entirely orthodox direction.

- [45] The appellant submits that regard can be had to the failure of the jury to reach a verdict on count 3. However, as there was no verdict, no inconsistency arises. In *R v DAL*⁸ it was held by the Court of Appeal that being discharged from reaching a verdict cannot be equated with a verdict of acquittal. Keane JA explained at [23]:

“The failure by the jury to agree on verdicts on a number of charges in the present case, for example, may well be explicable by reason of the eccentric view of one juror not being satisfied beyond reasonable doubt of all the elements of the offence in question. Such an explanation does not necessarily throw the integrity of the guilty verdicts into question because it does not imply that the jury as a whole entertained a reasonable doubt about the reliability of evidence germane to the counts on which it convicted in the same way that a verdict of acquittal might have done. It is only if an appellate court is satisfied that a jury must have convicted in spite of such doubts that it must intervene.”

- [46] Little weight can be attached to the fact that the jury could not reach a verdict on count 3.
- [47] In this case, there was a rational basis for the jury to reach the verdicts they did.
- [48] There was a reason to differentiate counts 1 and 2 from counts 3 and 4. For counts 1 and 2, on the complainant’s own account she did not move, react and did not say “no” to the acts alleged. For that reason, it is a rational conclusion that the jury could not exclude mistake of fact as to consent on those counts. It may be inferred that the jury rejected the appellant’s account that the act the subject of count 4 was consensual.
- [49] Counts 3 and 4 were different to counts 1 and 2. For count 3, the complainant’s evidence was that she covered her genitals and shook her head to indicate “no”. The event the subject of count 4 occurred just after the occurrence of count 3. The appellant left the room and then he came back and ejaculated into the complainant’s mouth. There was no suggestion by the complainant that she gave consent to this. In cross-examination, she denied that she said she wanted to taste his ejaculate, as was alleged by the appellant in his evidence. The appellant also admitted ejaculating into her mouth and leaving the room after he did this.
- [50] So, it may be seen that the jury may well have had a doubt as to whether the appellant was honestly mistaken as to consent for counts 1 and 2 but was satisfied that the Crown had excluded the defence for count 4 by reason of the complainant’s physical actions in respect of the conduct that was relevant to count 3 and what the appellant did.
- [51] The conduct that constituted count 5 was on the complainant’s evidence, separated in point of time from the occurrence of the other counts and the appellant denied that this act occurred. There was also no preliminary complaint evidence as to count 5. The difference in evidence that applied to count 5 meant that the acquittal on count 5 did not result in the guilty verdict on count 4 being inconsistent with the verdict on count 5.

⁸ [2005] QCA 281 at [5] and [23].

- [52] There is a logic and reasonableness in respect of the verdicts of not guilty on counts 1, 2 and 5 and the verdict of guilty on count 4.
- [53] The case of *R v Smillie*⁹ should be confined to its own facts. In *Smillie* the appellant had been convicted of one count of arson of a dwelling and one count of fraud. He had also been charged with arson of a motor vehicle and fraud and was acquitted of those counts.
- [54] The Crown's evidence came from the testimony of the appellant's former friend. Evidence was given that they were both in a motor vehicle when the appellant stopped it and set it alight. An insurance claim was lodged. With respect to the house counts, the friend gave evidence that the appellant asked him to burn down his house. The friend did so. At trial, it emerged that the friend was sentenced under the provisions of s 13A of the *Penalties and Sentences Act 1992* (Qld). The trial judge directed the jury that all counts depended on the friend's evidence.
- [55] Holmes J (as her Honour then was) held that there was no appreciable difference in the quality of the friend's evidence as between the counts.
- [56] *Smillie* is a different case to the present one. In the present case, there is an appreciable difference in the evidence between the counts as analysed above.
- [57] For the reasons given, the ground of appeal is not made out by the appellant.

ORDERS

- [58] I would order that the appeal be dismissed.

⁹ [2002] QCA 341; (2002) 134 A Crim R 100.